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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as an organist. The director determined that the petitioner had not established that the position of organist is a qualifying religious occupation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

* * *

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The issue under consideration is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

Rev. [REDACTED] rector of the petitioning church, states that the beneficiary "has for the past five years work[ed] with the Church in Guyana, West Indies as an organist. He is duly qualified with a Bachelor of Science Degree from the University of Guyana." The aforementioned degree is in the field of computer science. Rev. [REDACTED] does not explain the relevance of this degree.

Rev. [REDACTED] asserts that the church has budgeted for "the employment of an organist at One Thousand Dollars (\$1,000) per month. Rev. [REDACTED] describes the beneficiary's proposed duties:

His assignment in our Parish will be that of playing the organ for all services and assisting the members of the Youth Fellowship in the development of their musical talents in the playing of the calypso 'pan' and other musical instruments. These tasks will involve his being available to the Parish on a daily basis as programs are developed and enhanced. Housing and utilities for him will be provided by one of the Families of our Parish.

From the above description, it is not clear whether the position will be full-time. The beneficiary's "being available to the Parish on a daily basis" is not synonymous with his being *present* at the church every day. The reference to "programs [being] developed and enhanced" suggests that the position is still evolving.

The director requested more information, to establish that the petitioner has made a *bona fide* offer of full-time employment in a position that requires a religious worker, rather than a task generally delegated to a volunteer from the congregation. In response, Rev. [REDACTED] provides a more detailed description of the duties:

Provide musical accompaniment for all services held at the Church. This includes all Sunday services, all day and evening masses during the week, weddings, funerals and other feast days as directed by the Rector.

Conducts the choir rehearsals, responsible for the selection of appropriate hymns, songs, anthems and antiphons in accordance with the liturgical requirements.

Provides tutoring to both members and non-members in the music ministry. This includes piano / keyboard, drums, steel drums, bass guitar and music theory. Leads and directs the rehearsals of the church's 'in house' band.

Rev. [REDACTED] indicates that the beneficiary earns "a base salary of \$750 per month . . . [plus] remuneration of \$100 for each service that is not on a Sunday and \$30 per month per music student." The lack of specific totals makes it difficult to compare this offer to the original assertion that the beneficiary would earn \$1,000 per month. The record includes no evidence of past payments to the beneficiary. In a separate table, Rev. [REDACTED] provides an hourly breakdown of the beneficiary's work hours, indicating a total of 27¼ hours per week. Rev. [REDACTED] states that, in addition to these hours, the beneficiary "will be present at all special services during the week."

The director denied the petition, noting that qualifying work should be full-time, and that the petitioner has not shown that the beneficiary's work is a traditional religious duty, rather than the inherently secular task of playing music in what happens to be a religious setting. The director determined that the only apparent job requirement was musical ability.

On appeal, the petitioner submits new statements from the petitioner and a brief from counsel. In a joint letter, Rev. [REDACTED] and [REDACTED], warden of the petitioning church, assert that the beneficiary "is employed in a fulltime position as the Minister of Music" at the petitioning church. The work schedule previously submitted falls well short of full-time work, and on most weekdays the beneficiary had no scheduled hours before 4:00 p.m. This is significant when we consider that, in his native Guyana, the petitioner simultaneously worked as a church organist and as a programmer for a computer company (as we shall discuss in greater detail later in this decision).

The petitioner submits an "amended schedule," which now shows 35¼ hours per week. As recently as November 2002, the beneficiary was not working the hours now claimed. It appears that the petitioner has changed the petitioner's work schedule in response to the director's findings. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), which require that employment-based immigrant petitions must be amenable to approval as of the filing date of the visa petition.

In an affidavit submitted on appeal, Rev. [REDACTED] states "[t]he position and title of Minister of Music, Choir Director and Resident Organist is a religious occupation that requires much more than the ability to read music and play the organ. It is a full time occupation, requiring the individual to work in conjunction with the Priest, to achieve recommended norms both as to liturgical music and as to the manner of its rendition." Rev. [REDACTED] statement is unsupported by documentary evidence to show that the petitioner's denomination traditionally views organists and music directors as paid, full-time employees. The title "music minister" did not appear in the initial filing.

Furthermore, the assertion that the position is full-time conflicts with the petitioner's own prior submissions. The first work schedule showed a 27-hour work week, and Rev. [REDACTED] of St. James the Less Church never referred to the beneficiary as a full-time worker. Rather, Rev. [REDACTED] indicated that the beneficiary "played for every Sunday Eucharist and some of the weddings." The beneficiary began playing at Rev. [REDACTED] church in May 1997, shortly after the beneficiary's 17th birthday.

Counsel references the beneficiary's education both in computer science and in music. The director has never disputed the beneficiary's musical training. With regard to the beneficiary's computer science degree, that degree was clearly relevant to his work as a computer programmer from 2000 to 2001, but it is not self-evidently relevant to religious work. If anything, it shows that as recently as 2000, the beneficiary was pursuing professional training in an indisputably secular field of endeavor that has nothing to do with playing the church organ. Counsel observes that "computer music" is becoming more widespread as technology advances, and that the beneficiary's computer expertise can therefore extend into church music. The petitioner's own repeated descriptions of the beneficiary's work do not involve "computer music" at all, and there is no evidence in the record that the beneficiary's computer science expertise extends to music. At best, counsel's assertions in this area are speculative.

Counsel, in an effort to demonstrate that the beneficiary works in a religious occupation, discusses a district court decision involving the Roman Catholic Church. Neither the petitioner nor the beneficiary is of the Roman Catholic denomination. Because, by regulation, "traditional religious functions" are determined by denomination, this is not a trivial distinction. Furthermore, the cited case involves a "music minister." As noted previously, the petitioner originally described the beneficiary as an "organist," employing the term "music minister" only after the director had called the beneficiary's eligibility into question. The beneficiary himself, describing his past work on an immigration form, described himself as an "Organist & Choir Director," not as a music minister.

Upon consideration, we find that the petitioner has not overcome the grounds for denial. This, by itself, would warrant the dismissal of the appeal; but on further review, another factor emerges which further prevents a finding of eligibility.

The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the

two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on July 9, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an organist throughout the two years immediately prior to that date.

The only documentation of past employment that accompanied the initial filing is a letter from Rev. [REDACTED] of St. James the Less Church, Georgetown, Guyana. Rev. [REDACTED] states that the beneficiary was the organist and choir director for that church from May 1997 to January 2001. Simultaneously with the petition, the beneficiary filed a Form I-485 adjustment application, including a Form G-325A Biographic Information sheet. That form instructs the alien to list his or her employment during the preceding five years. The beneficiary signed and dated the form on May 21, 2001. The beneficiary listed two jobs: the aforementioned position at St. James the Less Church, and computer programmer for Anthony Sarjoo Computer Traders from September 2000 to January 2001. The beneficiary did not claim any employment after January 2001, although he did not prepare the form until several months later.

In response to a request for further information, Rev. [REDACTED] has indicated that, as of the date of the letter (November 7, 2002), the beneficiary "is employed on an open-ended contract." The contract itself is not reproduced in the record. There is no indication as to when the beneficiary started working for the petitioner.

The record indicates that the beneficiary worked as a church organist primarily on Sundays up until January 2001, and there is no clear indication that he worked as an organist at all between January 2001 and the filing date six months later. According to the beneficiary's own claims, by the age of 20 he had secured secular employment as a computer programmer. In prior case law, the term "continuously" has been interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948). Another interruption of continuity is when an individual's studies prevent full-time religious work. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). The beneficiary, 19 years old when the qualifying period began, was a student for much of that period. Thus, the gaps in the beneficiary's documented employment, along with his studies and stipulated secular work, serve to interrupt the continuity of his work as an organist during the 1999-2001 qualifying period.

The petitioner's initial evidence indicated that the beneficiary's work was a part-time occupation that the beneficiary undertook from the age of seventeen. The petitioner's later attempts to label the beneficiary a full-time "music minister" are inconsistent with the petitioner's earlier claims, and after-the-fact modifications of the beneficiary's duties or schedule cannot retroactively establish eligibility. Furthermore, the petitioner has not shown that the beneficiary worked continuously in the occupation during the two-year period immediately preceding the filing of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.